

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202003897	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 9:20 PM	Location of Incident: In front of Trek Bicycle Shop at 303 Bowery in Manhattan	Precinct: 09	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 06/04/2020 2:03 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 06/04/2020 2:03 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. LT Daniel Gallagher	00000	922389	LEG BUR

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gregory Scarazzini	19762	959207	SRG 1
2. POM John Swofford	12809	953461	077 PCT
3. POM Mauricio Thomas	26957	945466	SRG 2
4. POM Steven Holguin	19665	958704	SRG 1
5. POM Rafael Morla	13749	956114	SRG 3
6. POM Nordwing Veszter	07357	952321	SRG 4
7. AC Stephen Hughes	00000	874365	PBMS
8. POM Robert Price	05590	948117	SRG 4
9. POM Carl Callender	28550	944020	SRG 4
10. INS Gerard Dowling	00000	915640	SRG

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Gallagher	Force: Lieutenant Daniel Gallagher used physical force against § 87(2)(b)	
B.LT Daniel Gallagher	Force: Lieutenant Daniel Gallagher used physical force against § 87(2)(b)	
C. An officer	Discourtesy: An officer acted discourteously toward § 87(2)(b)	
D. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	

Officer(s)	Allegation	Investigator Recommendation
E. An officer	Discourtesy: An officer acted discourteously toward § 87(2)(b)	

## Case Summary

On June 4, 2020, § 87(2)(b) filed this complaint via telephone with the CCRB.

On May 30, 2020, § 87(2)(b) and her sister § 87(2)(b) were part of a protest group of several hundred pedestrians and cyclists that marched from the Barclays Center in Brooklyn to Union Square in Manhattan. At approximately 9:20 p.m., on The Bowery between East Houston Street and East 1st Avenue in Manhattan, the protest group encountered several details of NYPD officers. Clashes occurred, resulting in this complaint and CCRB complaints 202004096, 202003969, 202006126, and 202102650.

In this case, in front of the Trek Bicycle Shop at 303 Bowery in Manhattan, Lieutenant Daniel Gallagher of the Legal Bureau ordered officers to advance towards civilians and began ordering civilians to disperse. PO John Swofford of the 77<sup>th</sup> Precinct used physical force against § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)) and, assisted by PO Robert Price of SRG 4, PO Steven Holguin and PO Gregory Scarazzini of SRG 1, and Assistant Chief Stephen Hughes of Patrol Borough Manhattan South, used physical force to arrest § 87(2)(b) (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) alleged that during his arrest an officer pulled § 87(2)(b)'s glasses off his face (**Allegation C: Discourtesy**, § 87(2)(g)), that an officer stamped on the glasses (**Allegation D: Abuse of Authority**, § 87(2)(g)), and that an officer pulled off § 87(2)(b)'s face mask (**Allegation E: Discourtesy**, § 87(2)(g)). § 87(2)(b) received a summons for § 87(2)(b), § 87(2)(a) 160.50 as a result of this incident. (BR 08)

Across the relevant investigations, NYPD Legal provided 66 BWC videos and identified 45 negative results for BWC footage related to this incident. Videos from PO Nordwing Veszter of, SRG 4 (Board Review [BR] 01), PO Scarazzini (BR 02), PO Holguin (BR 03), and PO Rafael Morla of SRG 3 (BR 04) have footage material to this incident. These officers' Axon Body 2 cameras recorded their videos in their default time zone, Zulu, as indicated by the letter 'Z' after their internal timestamps. On May 30, 2020, Zulu time was four hours ahead of Eastern Daylight Time (EDT).

§ 87(2)(b) a complainant in CCRB 202102650, provided a civilian video (CV1) with footage material to § 87(2)(b) allegations. (BR 05)

§ 87(2)(b) provided CV2, a cell phone video § 87(2)(b) recorded during this incident (BR 06), and a photograph he took on May 31, 2020, of the injuries he sustained to his face. (BR 07)

## Findings and Recommendations

**Allegation (A) Force: Lieutenant Daniel Gallagher used physical force against § 87(2)(b)**

**Allegation (B) Force: Lieutenant Daniel Gallagher used physical force against § 87(2)(b)**

**Allegation (C) Discourtesy: An officer acted discourteously toward § 87(2)(b)**

**Allegation (D) Abuse of Authority: An officer damaged § 87(2)(b)'s property.**

**Allegation (E) Discourtesy: An officer acted discourteously toward § 87(2)(b)**

On May 30, 2020, § 87(2)(b) and § 87(2)(b) were part of a large group of pedestrians and cyclists that marched from the Barclays Center in Brooklyn into Manhattan. The group headed north, turned onto East Houston Street, and turned onto The Bowery, where they encountered multiple details of NYPD officers. By the time they arrived at the intersection, clashes between officers and protestors were ongoing and several individuals had already been arrested.

§ 87(2)(b) stated that an officer pushed § 87(2)(b) and § 87(2)(b) screamed at the officer, “Don’t you fucking touch her you fucking piece of shit.” The officer told him to back up and pushed him against a storefront wall. § 87(2)(b) fell to the ground, surrounded by several officers. An officer grabbed his glasses off his face, scratching his face during the process, an officer stamped on his glasses, breaking them, and an officer ripped off his face mask. § 87(2)(b) could not describe the officers who took these actions. (BR 13)

§ 87(2)(b) stated that a group of four to five officers pushed her, § 87(2)(b) and § 87(2)(b) against a storefront and an officer ordered § 87(2)(b) to move. § 87(2)(b) was up against the wall where officers had pushed her and did not know where to go. § 87(2)(b) asked the officer where he wanted her to go and he repeatedly told her to leave but not where to go. She turned away from the officer, he turned his baton horizontally, and he pushed § 87(2)(b) with it. § 87(2)(b) cursed at the officer, stating in sum and substance, “hey you fucker.” The officer turned to face § 87(2)(b). Two to three officers pushed and pulled at § 87(2)(b) wrapped her arm around § 87(2)(b) s head, obscuring § 87(2)(b) s sight, and moved her away from § 87(2)(b) s arrest. When § 87(2)(b) next saw § 87(2)(b) he was on the ground. § 87(2)(b) did not see § 87(2)(b) going to the ground. § 87(2)(b) saw that § 87(2)(b) s glasses were broken, and he had a cut on his forehead. She did not see how he sustained the cut. (BR 14)

Civilians § 87(2)(b) and § 87(2)(b) were in the immediate vicinity of § 87(2)(b) s arrest, as shown by a photograph § 87(2)(b) took during the incident. (BR 15) The CCRB interviewed all three of them. The CCRB was unable to reach § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) stated that he saw an officer in a helmet and a short-sleeved, dark uniform hit an individual in the face by extending his arm and the back of his hand in a motion such as one would make if one were “holding a shield” and “wanted to hit someone with it.” He was mostly certain the individual was § 87(2)(b) whom he met later that night. § 87(2)(b) could not recall whether the officer had a shield but maintained his description of the way in which the officer moved his arm. § 87(2)(b) stated with qualified certainty that § 87(2)(b) was wearing glasses when the officer struck him and that the strike broke the glasses. He did not see what happened with § 87(2)(b) after that. (BR 17)

§ 87(2)(b) did not recall being in a position to witness § 87(2)(b) s arrest. (BR 18)

The CCRB interviewed PO Swofford, PO Scarazzini, PO Holguin, and Assistant Chief Hughes about this incident. Lieutenant Gallagher retired from the NYPD on July 28, 2020. (BR 19)

PO Swofford stated he did not recall this incident or participating in arrests on May 30, 2020. BWC footage from PO Holguin, BWC footage from PO Scarazzini, and footage from Civilian Video 2 (CV2) did not refresh PO Swofford’s recollection of the incident. (BR 20)

PO Scarazzini stated that when he arrived on scene, he was following PO Holguin and saw patrol officers and a white-shirted officer approach § 87(2)(b) grab him, and attempt to place him in handcuffs. PO Scarazzini did not see what happened prior to that moment. He did not know any of the officers involved at that point. A member of NYPD Legal later informed him that a white-shirted officer stated § 87(2)(b) had been given an order to disperse and had failed to do so. PO Scarazzini never issued § 87(2)(b) an order to disperse, and he did not hear an officer give this order. PO Scarazzini did not see § 87(2)(b) illegally gathered with a group of people. PO Scarazzini was not aware of § 87(2)(b) doing anything else that constituted disorderly conduct.

Upon seeing officers engage § 87(2)(b) PO Scarazzini and PO Holguin went to assist them. An officer pushed § 87(2)(b) backwards into a store-front wall, but he did not know which officer did this. PO Scarazzini did not perform this action. Officers grabbed § 87(2)(b) and attempted to place him in handcuffs. § 87(2)(b) passively resisted arrest by stiffening his arms to his chest. He did not flail his arms or attempt to fight the officers. PO Scarazzini did not recall whether § 87(2)(b) made any statements or whether officers were giving § 87(2)(b) commands. PO Scarazzini and PO Holguin grabbed § 87(2)(b) and guided him to the ground. PO Scarazzini then got behind him, grabbed his arms, and handcuffed him.

PO Scarazzini recalled § 87(2)(b) was wearing glasses, which were damaged during this interaction. PO Scarazzini did not know how they became damaged. § 87(2)(b) stated that his glasses were broken, PO Scarazzini retrieved the broken glasses from the sidewalk, and he placed them in § 87(2)(b)'s backpack. PO Scarazzini stated that he did not believe he saw § 87(2)(b)'s glasses before he was guided to the ground, but he was not sure. § 87(2)(b) had a mask, which PO Scarazzini believed was also on the ground. PO Scarazzini picked it up for him and fixed it back onto his face once everything was settled down. PO Scarazzini also picked up § 87(2)(b)'s cell phone from the ground and placed it in his backpack. PO Scarazzini did not see any damage to the cell phone.

At the Mass Arrest Processing Center, PO Scarazzini noticed that § 87(2)(b) had one or two cuts on his face near his eyebrow and the bridge of his nose. PO Scarazzini did not know how he sustained those cuts and § 87(2)(b) did not complain of any injuries or pain.

No video evidence enhanced PO Scarazzini's recollection of the incident. (BR 21)

PO Holguin stated that upon arriving at the location, Sergeant Carlsen of SRG ordered officers out of their vans and into an emergency line, which is usually called before a supervisor gives instructions. Sergeant Carlsen relayed that "the Captain of the day" passed down the order that SRG officers were to assist officers on scene with their arrests. PO Holguin saw that members of SRG 1-5 were already on scene, as well as members of the Disorder Control Unit, one of whom had a Long-Range Acoustic Device with him, and other officers from other commands PO Holguin could not recall.

PO Holguin moved forward after receiving his order and lost sight of Sergeant Carlsen. He went to the west side of the street and saw uniformed officers who appeared in need of assistance taking an individual into custody. The individual, identified by the investigation as § 87(2)(b) was screaming at an officer because his girlfriend was being arrested. Officers had tried to arrest him and he was flailing his arms. PO Holguin moved toward § 87(2)(b) helped officers get § 87(2)(b)'s hands behind his back, and activated his BWC. Approximately 3-4 other individuals were being arrested at the same time in the general area. PO Holguin did not see an officer push any individual before he assisted with § 87(2)(b). In addition to PO Holguin, PO Scarazzini, patrol officers PO Holguin did not know, and non-SRG white shirts were in the area.

PO Holguin stated he was "probably the second person" involved with § 87(2)(b)'s arrest and that he pushed § 87(2)(b) against a wall to keep him steady so officers could get § 87(2)(b)'s arms behind his back to flex cuff him. PO Holguin stated to § 87(2)(b) "you're under arrest for violating direct orders, please put your arms behind your back." § 87(2)(b) began flailing his body. PO Holguin stated to the CCRB that § 87(2)(b) was in violation of disorderly conduct laws and had failed to disperse when ordered. He stated the LRAD was giving orders at the time, informing individuals they needed to disperse. PO Holguin stated anyone who remained was subject to automatic arrest. PO Holguin stated § 87(2)(b)'s resistance was initially at a level 10 out of 10 but reduced to a level 3 when § 87(2)(b) understood he was under arrest. Several officers guided § 87(2)(b) to the ground so he could be cuffed. PO Holguin held § 87(2)(b)

§ 87(2)(b)'s arms and did not recall who placed § 87(2)(b) into cuffs. § 87(2)(b) tensed his body and moved somewhat during this process but officers were able to cuff him.

PO Holguin did not see an officer grab § 87(2)(b)'s glasses and did not recall § 87(2)(b) having glasses at any point. He did not know if he stepped on a pair of glasses. He did not recall whether § 87(2)(b) was wearing a face mask but stated he did not rip a mask off of § 87(2)(b) nor did he see any other officer do so. No officer threw § 87(2)(b)'s phone to the ground. (BR 22)

Assistant Chief Hughes stated he did not recall this incident. He watched BWC footage from PO Holguin and PO Scarazzini, identified himself as the white-shirt officer interacting with § 87(2)(b) and stated it did not refresh his recollection. Footage from CV1 did not refresh his recollection. (BR 23)

In PO Veszter's BWC video at 03:49 into the video, § 87(2)(b) arrives on The Bowery from the intersection with East Houston Street wearing a white t-shirt with the words "Teen Aged" in black letters and black shorts that end above the knee. He is wearing a backpack. He walks northbound and stands on the median until 04:19, when he walks east towards the Trek Bicycle Shop. § 87(2)(b) and § 87(2)(b) appear on the right side of the frame at 04:23 and run towards § 87(2)(b) and the Trek Bicycle Shop. Seconds later, Lieutenant Gallagher from NYPD Legal walks towards them, gesturing backwards at PO Veszter and other officers. An officer states, "move up," and PO Veszter and several officers move toward the east side of The Bowery. At 04:37, Lieutenant Gallagher can be heard yelling, "get lost." (BR 01)

CV1 was recorded from the east sidewalk of The Bowery in the vicinity of the Trek Bicycle Shop and captures Lieutenant Gallagher yelling, "get lost," at 0:11. By that point in CV1, dozens of police officers, including Lieutenant Gallagher and Chief John D'Adamo of SRG, have begun moving northeast on The Bowery ordering civilians to disperse. Chief D'Adamo yells to officers between 0:00 and 0:04, "grab the bodies. Grab them. Grab anybody." Between 0:11 and 0:16, Lieutenant Gallagher orders civilians to "get lost" and "get out of here." PO Swofford appears and walks behind Lieutenant Gallagher. PO Swofford also appears to be attempting to clear the street of civilians. At 0:14 seconds, § 87(2)(b) is visible behind Lieutenant Gallagher recording a video with her cell phone. At 0:15 seconds, § 87(2)(b) is visible standing on the eastern sidewalk a few feet behind Lieutenant Gallagher. § 87(2)(b) is wearing glasses and a face mask. PO Swofford is moving in § 87(2)(b)'s direction when CV1 pans away for six seconds. § 87(2)(b) has a cell phone in his hands. (BR 05)

§ 87(2)(b) provided the video § 87(2)(b) was recording at the time, CV2. In it, PO Swofford walks across the frame repeating, "go that way," and gesturing with a baton in his hand. At 0:02, a female voice can be heard out of frame asking, "why?" One to two seconds later, a female voice states, "don't touch her." The camera pans to the right and captures PO Swofford holding his baton horizontally with both hands pushing it against § 87(2)(b)'s back. Relevant frames from the video are available for reference. (BR 09) § 87(2)(b) yells, "Hey! Do not fucking touch her you fucking piece of shit." PO Swofford begins turning towards § 87(2)(b) and the video is obscured for approximately one second, during which PO Swofford is heard ordering § 87(2)(b) to get back. The video ends showing PO Swofford facing § 87(2)(b). PO Swofford is holding his baton vertically but his arm is not raised. § 87(2)(b) is recoiling from PO Swofford and holding his right arm in front of his face. He is still wearing glasses and a face mask. (BR 06)

PO Scarazzini's BWC video captures this interaction from 0:28 to 0:33. A frame indicating § 87(2)(b) and PO Swofford is available for reference. (BR 10) The video shows that when PO Swofford turns his attention to § 87(2)(b) PO Price, Assistant Chief Hughes, and PO Holguin are moving toward the two of them. PO Scarazzini's video is obscured or unclear between 0:33 and 0:36, at which point PO Holguin pushes § 87(2)(b) against a storefront window of the Trek Bicycle Shop. (BR 02)

PO Morla's BWC recording at 3:53 shows that in the seconds where PO Scarazzini's camera is obscured, § 87(2)(b) moves southbound and is immediately blocked by PO Price, who has a bicycle. PO Swofford moves towards § 87(2)(b) and PO Price. Assistant Chief Hughes' body blocks PO Morla's camera from capturing what occurs between PO Price, PO Swofford, and § 87(2)(b) for approximately two seconds, after which § 87(2)(b) appears moving backward, northbound, away from PO Price and PO Swofford. PO Holguin immediately grabs him and pushes him against the window. Assistant Chief Hughes grabs the front of § 87(2)(b)'s shirt. PO Holguin is to the left of JSB and PO Swofford is to his right. (BR 04)

PO Scarazzini's BWC shows between 0:39 and 0:45 that § 87(2)(b) crouches down and raises his hands near his head when the officers surround him. PO Scarazzini and the other officers are reaching toward § 87(2)(b) who ends up face-down on the sidewalk lying on top of his hands. Officers immediately pull § 87(2)(b)'s hands free and PO Scarazzini begins handcuffing § 87(2)(b). At 0:53, § 87(2)(b)'s face is visible as he is being handcuffed. His mask is on but he no longer appears to be wearing glasses. At 1:00, PO Scarazzini's video begins recording audio and § 87(2)(b) states, "you fucking broke my glasses. I'm blind." PO Holguin stands § 87(2)(b) up and § 87(2)(b)'s mask falls off his face. (BR 02) At 01:19, § 87(2)(b)'s face is visible and he appears to have injuries consistent with the photograph he provided. Frames are attached for reference. (BR 11) At 01:22, while PO Scarazzini is bending over to pick up § 87(2)(b)'s mask, his left foot is seen on top of § 87(2)(b)'s glasses. A frame is attached for reference. (BR 12)

PO Veszter's BWC recording between when it begins recording audio at 1:00 and 5:54 shows that the first loudspeaker announcement alerting civilians that the assembly had been declared unlawful and ordering them to disperse occurred at 9:21:49 p.m., by which point § 87(2)(b) was already in handcuffs. (BR 01)

PO Holguin's BWC video does not capture additional information material to this investigation. (BR 03)

Video evidence shows that Lieutenant Gallagher ordered officers to advance and issued orders for civilians to disperse. PO Swofford ordered § 87(2)(b) to disperse and she responded, "why?" PO Swofford held his baton sideways and used it to push her away from the location. § 87(2)(b) who was also not dispersing, involved himself in the interaction between PO Swofford and § 87(2)(b) and PO Swofford initiated the arrest of § 87(2)(b). Assistant Chief Hughes, PO Scarazzini, PO Holguin, and PO Price saw PO Swofford attempting to arrest an individual and assisted him. Lieutenant Gallagher's orders set these events in motion, but Lieutenant Gallagher is retired. § 87(2)(g)

§ 87(2)(b) alleged that during the incident an officer pulled his glasses off his face, scratching him in the process, and that an officer stamped on his glasses, breaking them. He could not describe the officer(s) who took these actions. § 87(2)(b) alleged he saw an officer strike § 87(2)(b) in the face, breaking his glasses, but could not describe the officer. PO Scarazzini recalled that § 87(2)(b)'s glasses were damaged during the incident but did not recall how. No other officer recalled details relevant to these allegations.

Video evidence shows that § 87(2)(b) was wearing glasses before he was arrested and that after he was arrested his glasses were not on his face and he had an abrasion on the bridge of his nose. Video evidence shows that during the incident PO Scarazzini accidentally stepped on § 87(2)(b)'s glasses, but no video captures when § 87(2)(b)'s glasses left his face. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that during his arrest an officer pulled off § 87(2)(b)'s face mask. However, video evidence shows that § 87(2)(b)'s mask was still on his face when he was handcuffed. § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party. (BR 24)
- § 87(2)(b) has been party to one other CCRB complaint and has been named a party in no other allegations. (BR 25)
- Lieutenant Gallagher is retired. (BR 19)

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- On February 2, 2022, the New York City Office of the Comptroller stated it has no record of a Notice of Claim being filed in regards this to this complaint. (BR 26)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City. (BR 27)
- According to OCA, § 87(2)(b) has no history of convictions in New York City. (BR 28)

Squad No.: 09

Investigator:	<u>Christopher Olmsted</u>	<u>Investigator Chris Olmsted</u>	<u>02/04/2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>2/4/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date